

Federal Aviation Administration, DOT

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the discretion of the FAA Decisionmaker. If review is taken, the FAA Decisionmaker will issue a final decision on the application or remand the application to the ALJ who issue the initial fee award determination for further proceedings.

(b) In proceedings under part 17 of this chapter and the AMS, the adjudicative officer shall prepare findings and recommendations for the Office of Dispute Resolution for Acquisition with recommendations as to whether or not an award should be made, the amount of the award, and the reasons therefor. The Office of Dispute Resolution for Acquisition shall submit a recommended order to the Administrator after the completion of all submissions related to the EAJA application. Upon the Administrator's action, the order shall become final, and may be reviewed under 49 U.S.C. 46110.

[Doc. No. FAA-1998-4379, 64 FR 32936, June 18, 1999]

§ 14.29 Judicial review.

If an applicant is dissatisfied with the determination of fees and other expenses made under this subsection, pursuant 5 U.S.C. 504(c)(2), that applicant may, within thirty (30) days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the FAA adversary adjudication. The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the FAA. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

§ 14.30 Payment of award.

An applicant seeking payment of an award shall submit to the disbursing official of the FAA a copy of the FAA Decisionmaker's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Applications for award grants in cases involving the FAA shall

be sent to: The Office of Accounting and Audit, AAA-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 15—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

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AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 2672, 2675; 49 U.S.C. 106(g), 40113, 44721.

Subpart A—General Procedures

SOURCE: Docket No. 25264, 52 FR 18171, May 13, 1987, unless otherwise noted.

§ 15.1 Scope of regulations.

(a) These regulations apply to claims asserted under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to, or loss of property, or for personal injury or death, caused by the negligent or wrongful act or omission of an employee of the FAA acting within the scope of office or employment. The regulations in this part supplement the Attorney General's regulations in 28 CFR Part 14, as amended. The regulations in 28 CFR Part 14, as amended, and the regulations in this part apply

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to consideration by the FAA of administrative claims under the Federal Tort Claims Act.

§ 15.3 Administrative claim, when presented; appropriate office.

(a) A claim is deemed to have been presented when the FAA receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to, or loss of, property or for personal injury or death, alleged to have occurred by reason of the incident. A claim which should have been presented to the FAA but which was mistakenly filed with another Federal agency, is deemed presented to the FAA on the date the claim is received by the FAA at a place designated in paragraph (b) of this section. A claim addressed to, or filed with, the FAA by mistake will be transferred to the appropriate Federal agency, if that agency can be determined, or returned to the claimant.

(b) Claims shall be delivered or mailed to the Assistant Chief Counsel, Litigation Division, AGC-400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, or alternatively, may be mailed or delivered to the Regional Counsel in any of the FAA Regional Offices or the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office.

(d) A claim presented in accordance with this section may be amended by the claimant at any time prior to final FAA action or prior to the exercise of the claimant's option, under 28 U.S.C. 2675(a), to deem the agency's failure to make a final disposition of his or her claim within 6 months after it was filed as a final denial. Each amendment to a claim shall be submitted in writing and signed by the claimant or the claimant's duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the FAA has 6 months thereafter in which to make a final disposition of the claim as amended, and the claimant's option under 28 U.S.C. 2675(a) does

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not accrue until 6 months after the filing of the amendment.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 15-1, 54 FR 39290, Sept. 25, 1989; Amdt. 15-4, 62 FR 46866, Sept. 4, 1997]

§ 15.5 Administrative claim, who may file.

(a) A claim for injury to, or loss of, property may be presented by the owner of the property interest which is the subject of the claim or by the owner's duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person or that person's duly authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interest appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, it shall present with its claim appropriate evidence that it has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 15.7 Administrative claims; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) The decedent's employment or occupation at time of death, including monthly or yearly salary or earnings (if any), and the duration of last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent upon decedent for support at the time of death.

(5) Decedent's general, physical, and mental conditions before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injuries, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

(2) In addition to the report required by paragraph (b)(1) of this section, the claimant may be required to submit to a physical or mental examination by a physician employed by the FAA or another Federal agency. A copy of the report of the examining physician is made available to the claimant upon the claimant's written request if the claimant has, upon request, furnished the report required by paragraph (b)(1), and has made or agrees to make avail-

able to the FAA any other physician's reports previously or thereafter made on the physical or mental condition which is the subject matter of the claim.

(3) Itemized bills for medical, dental, and hospital expenses incurred or itemized receipts of payment for such expenses.

(4) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(5) If a claim is made for loss of time from employment, a written statement from the claimant's employer showing actual time lost from employment, whether the claimant is a full or part-time employee, and wages or salary actually lost.

(6) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(7) Any other evidence or information which may have a bearing on the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 15.9 Investigation and examination.

The FAA may investigate a claim or conduct a physical examination of a claimant. The FAA may request any other Federal agency to investigate a

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claim or conduct a physical examination of a claimant and provide a report of the investigation or examination to the FAA.

Subpart B—Indemnification Under Section 1118 of the Federal Aviation Act of 1958

SOURCE: Amdt. 15-2, 55 FR 18710, May 3, 1990, unless otherwise noted.

§ 15.101 Applicability.

This subpart prescribes procedural requirements for the indemnification of a publisher of aeronautical charts or maps under section 1118 of the Federal Aviation Act of 1958, as amended, when the publisher incurs liability as a result of publishing—

(a) A chart or map accurately depicting a defective or deficient flight procedure or airway that was promulgated by the FAA; or

(b) Aeronautical data that—

(1) Is visually displayed in the cockpit of an aircraft; and

(2) When visually displayed, accurately depicts a defective or deficient flight procedure or airway promulgated by the FAA.

§ 15.103 Exclusions.

A publisher that requests indemnification under this part will not be indemnified if—

(a) The complaint filed against the publisher, or demand for payment against the publisher, first occurred before December 19, 1985;

(b) The publisher does not negotiate a good faith settlement;

(c) The publisher does not conduct a good faith defense;

(d) The defective or deficient flight procedure or airway—

(1) Was not promulgated by the FAA;

(2) Was not accurately depicted on the publisher's chart or map;

(3) Was not accurately displayed on a visual display in the cockpit, or

(4) Was obviously defective or deficient;

(e) The publisher does not give notice as required by § 15.107 of this part and that failure is prejudicial to the Government; or

(f) The publisher does not appeal a lower court's decision pursuant to a re-

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quest by the Administrator under § 15.111(d)(2) of this part.

§ 15.105 Filing of requests for indemnification.

A request for indemnification under this part—

(a) May be filed by—

(1) A publisher described in § 15.101 of this part; or

(2) The publisher's duly authorized agent or legal representative;

(b) Shall be filed with the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; and

(c) Shall state the basis for the publisher's assertion that indemnification under this part is required.

§ 15.107 Notification requirements.

A request for indemnification will not be considered by the FAA unless the following conditions are met:

(a) The publisher must notify the Chief Counsel of the FAA, within the time limits prescribed in paragraph (b) or (c) of this section, of the publisher's first receipt of a demand for payment, or service of a complaint in any proceeding, federal or state, in which it appears that indemnification under this part may be required.

(b) For each complaint filed, or demand for payment made, on or after December 19, 1985, and before June 4, 1990, the notice required by paragraph (a) of this section must be received by the FAA on or before July 2, 1990.

(c) For each complaint filed, or demand for payment made, on or after June 4, 1990, the notice required by paragraph (a) of this section must be received by the FAA within 60 days after the day the publisher first receives the demand for payment or service of the complaint.

(d) Within 5 days after the day a judgment is rendered against the publisher in any proceeding, or within 30 days of the denial of an appeal, whichever is later, the publisher must notify the FAA Chief Counsel that—

(1) There is an adverse judgment against the publisher; and

(2) The publisher has a claim for indemnification against the FAA arising out of that judgment.

§ 15.109 Settlements.

(a) A publisher may not settle a claim with another party, for which the publisher has sought, or intends to seek, indemnification under this part, unless—

(1) The publisher submits a copy of the proposed settlement, and a statement justifying the settlement, to the Chief Counsel of the FAA; and

(2) If the Administrator does not necessary, the appropriate official of the Department of Justice, approves the proposed settlement.

(3) The publisher submits a signed release that clearly releases the United States from any further liability to the publisher and the claimant.

(b) If the Administrator does not approve the proposed settlement, the Administrator will—

(1) So notify the publisher by registered mail within 60 days of receipt of the proposed settlement; and

(2) Explain why the request for indemnification was not approved.

(c) If the Administrator approves the proposed settlement, the Administrator will so notify the publisher by registered mail within 60 days after the FAA's receipt of the proposed settlement.

(d) If the Administrator does not have sufficient information to approve or disapprove the proposed settlement, the Administrator will request, within 60 days after receipt of the proposed settlement, the additional information needed to make a determination.

§ 15.111 Conduct of litigation.

(a) If a lawsuit is filed against the publisher and the publisher has sought, or intends to seek, indemnification under this part, the publisher shall—

(1) Give notice as required by § 15.107 of this part;

(2) If requested by the United States—

(i) Implead the United States as a third-party defendant in the action; and

(ii) Arrange for the removal of the action to Federal Court;

(3) Promptly provide any additional information requested by the United States; and

(4) Cooperate with the United States in the defense of the lawsuit.

(b) If the lawsuit filed against the publisher results in a proposed settlement, the publisher shall submit that proposed settlement to the FAA for approval in accordance with § 15.109 of this part.

(c) If the lawsuit filed against the publisher results in a judgment against the publisher and the publisher has sought, or intends to seek, indemnification under this part as a result of the adverse judgment, the publisher shall—

(1) Give notice to the FAA as required by § 15.107(d) of this part;

(2) Submit a copy of the trial court's decision to the FAA Chief Counsel not more than 5 business days after the adverse judgment is rendered; and

(3) If an appeal is taken from the adverse judgment, submit a copy of the appellate decision to the FAA Chief Counsel not more than 30 days after that decision is rendered.

(d) Within 60 days after receipt of the trial court's decision, the Administrator by registered mail will—

(1) Notify the publisher that indemnification is required under this part;

(2) Request that the publisher appeal the trial court's adverse decision; or

(3) Notify the publisher that it is not entitled to indemnification under this part and briefly state the basis for the denial.

§ 15.113 Indemnification agreements.

(a) Upon a finding of the Administrator that indemnification is required under this part, and after obtaining the concurrence of the United States Department of Justice, the FAA will promptly enter into an indemnification agreement providing for the payment of the costs specified in paragraph (c) of this section.

(b) The indemnification agreement will be signed by the Chief Counsel and the publisher.

(c) The FAA will indemnify the publisher for—

(1) Compensatory damages awarded by the court against the publisher;

(2) Reasonable costs and fees, including reasonable attorney fees at a rate not to exceed that permitted under the Equal Access to Justice Act (5 U.S.C. 504), and any postjudgment interest, if

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the publisher conducts a good faith defense, or pursues a good faith appeal, at the request, or with the concurrence, of the FAA.

(d) Except as otherwise provided in this section, the FAA will not indemnify the publisher for—

- (1) Punitive or exemplary damages;
- (2) Civil or criminal fines or any other litigation sanctions;
- (3) Postjudgment interest;
- (4) Costs;
- (5) Attorney fees; or
- (6) Other incidental expenses.

(e) The indemnification agreement must provide that the Government will be subrogated to all claims or rights of the publisher, including third-party claims, cross-claims, and counter-claims.

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After execution of the indemnification agreement, the FAA will submit the agreement to the United States Department of Justice and request payment, in accordance with the agreement, from the Judgment Fund.

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